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Paper No. 6

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NOV 05 2002

In re Application of

Clark et al.

Application No. 10/039,311

Filed: October 26, 2001

Attorney Docket No. 70625

OFFICE OF PETITIONS

DECISION GRANTING

PETITION

This is a decision on the petition under 37 CFR 1.181 filed October 15, 2002.

On October 26, 2001, petitioner submitted a copy of a declaration from the parent application which was missing a signature of one of the inventors. Along with the declaration, a copy of the petition from the parent application was filed. The copy of the petition was construed as a petition for the current application. Petitioner states the papers were not intended as a petition and requests a refund of the \$130 charged to petitioner's deposit account for the petition.

The petition is **granted**.

The petition fee of \$130 will be credited to deposit account no. 06-1135.

The prior decision noted:

Petitioner should note that ambiguity seems to exist in regards to parent application no. 09/326,128. The petition in the instant file seems like it may be addressed to the parent application and not the instant application. A review of office computer records fails to indicate that a Rule 47 petition has been filed in the parent application even though such review indicates that a petition fee of \$130 has been received for the parent application. Review of Office computer records indicates that the parent application is currently pending. If an oath or declaration signed by all of the inventors has been filed in the parent application, then petitioner may simply file a copy of such oath or declaration as a part of the instant application. If a petition under 37 CFR 1.47 was filed and granted in the parent application, and such papers were not entered into the computer system, then petitioner may simply file a copy of the decision as a part of the child application. If petitioner has filed a petition under 37 CFR 1.47 in the parent application, but has not received a decision, then petitioner may wish to send a copy of the petition, and any desired supplement to the petition, by facsimile transmission to the Office of Petitions at 703-308-6916, so that the Office of Petitions may consider the merits of the petition.

Page 3 of the petition states, "A photocopy of said petition for "Filing on Behalf of a Nonsigning Inventor" was submitted with the present application merely as evidence that the petition was submitted and granted in the parent application."

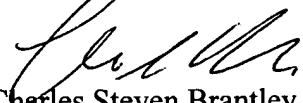
When a child (continuing) application uses a prior parent's application's declaration and when a Rule 47 petition was granted in the prior application, then the continuing application must include a copy of decision letter from the parent application. See 37 CFR 1.63(d)(3)(I). A

petition in the child application is unnecessary and the copy of the decision may be filed with the Office of Initial Patent Examination.

Although petitioner states that the Rule 47 petition was granted in the parent application, petitioner has not submitted a copy of the decision granting the petition.

The file will now be forwarded to the Office of Initial Patent Examination for further processing with a filing date of October 26, 2001, using the application papers filed on October 26, 2001, and the copy of page 57 of the specification filed on June 4, 2002. In addition, the Office of Initial Patent Examination will mail a Notice of Missing Parts since a declaration in compliance with 37 CFR 1.63 has not been submitted and the petition under 37 CFR 1.47 has been "withdrawn."

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy